

DISTRICT COURT OF APPEAL OF FLORIDA, SECOND DISTRICT

Avesta Communities, LLC, and Peter Rex a/k/a Peter Reynolds v. Paul Fred

Avesta Communities · No. 2D2025-0367 · Decided March 25, 2026

SUMMARY

The Florida Second District Court of Appeal reversed an order denying a motion to disqualify counsel in a dispute involving Avesta Communities, LLC and its members. The court held that the circuit court abused its discretion by excluding a key witness from the evidentiary hearing without analyzing prejudice under the factors identified in *Binger v. King Pest Control*. The case was remanded for a new evidentiary hearing, with no ruling on the ultimate merits of disqualification.

CASE DETAILS

COURT	District Court of Appeal of Florida, Second District
WRITING FOR THE COURT	Lucas, Chief Judge; Black, Judge; Sleet, Judge
JURISDICTION	District Court of Appeal of Florida, Second District
DECIDED	March 25, 2026
DOCKET	2D2025-0367
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Interlocutory appeal under Florida Rule of Appellate Procedure 9.130 from an order denying a motion to disqualify opposing counsel after an evidentiary hearing.
STANDARD OF REVIEW	Abuse of discretion. The court also applied abuse-of-discretion review to the exclusion of an unlisted witness at an evidentiary hearing, while recognizing that the proceeding's context may affect the limits of that discretion.
PRECEDENTIAL VALUE	Published opinion
PARTIES	Avesta Communities, LLC, Peter Rex a/k/a Peter Reynolds v. Paul Fred

TOPICS

- appellate procedure
- interlocutory appeal
- evidence
- civil procedure
- limited liability companies

PRACTICE AREAS

appellate procedure

legal ethics

civil procedure

evidence

limited liability company law

QUESTIONS PRESENTED

1. Whether the circuit court abused its discretion by excluding Michael Beltran's live testimony from an evidentiary hearing on a motion to disqualify counsel because Avesta Communities and Rex failed to list him as a witness.
2. Whether the exclusion of Beltran's testimony required reversal of the order denying disqualification of Shutts & Bowen.

HOLDINGS

1. A trial court may enforce witness-list disclosure requirements at an evidentiary hearing, but it must exercise that discretion in light of the Binger factors, particularly whether the objecting party suffered surprise in fact or other prejudice. Because the circuit court made no finding of prejudice and the record showed no substantial prejudice, it abused its discretion by excluding Beltran's testimony.
2. The Binger framework governing exclusion of undisclosed witnesses at trial applies to an evidentiary hearing on a motion to disqualify counsel, with the court's discretion tempered by the nature of the hearing and the importance of the evidence.

KEY QUOTATIONS

"The discretion to do so must not be exercised blindly, however, and should be guided largely by a determination as to whether use of the undisclosed witness will prejudice the objecting party." (at 10-11)

"If after considering these factors, and any others that are relevant, the trial court concludes that use of the undisclosed witness will not substantially endanger the fairness of the proceeding, the pretrial order mandating disclosure should be modified and the witness should be allowed to testify." (at 11)

"In sum, Mr. Beltran's testimony was critical in this hearing, and he should have been allowed to testify." (at 13)

FACTUAL BACKGROUND

Avesta Communities, a Delaware limited liability company operating through Florida real-estate subsidiaries, was owned by Peter Rex, Paul Fred, Nathaniel Fischer, and an entity associated with Robert Reynolds. Fred's ownership and management disputes with Avesta and its co-owners led to litigation asserting direct and derivative claims. Before joining Shutts & Bowen, Matthew Meyer worked with Michael Beltran at Ansa Assuncao, where Beltran represented Avesta and Rex regarding the dispute and averred that Meyer received confidential information. When Avesta and Rex sought to disqualify Shutts & Bowen after it appeared for Fred, the circuit court excluded Beltran's live testimony even though Fred had listed Beltran as his own witness and had received Beltran's declaration.

PROCEDURAL HISTORY

Paul Fred sued Avesta Communities and related parties asserting direct and derivative claims. After Shutts & Bowen appeared for Fred, Avesta Communities and Rex moved to disqualify the firm based in part on alleged confidential information obtained by Matthew Meyer while working with former Avesta counsel Michael Beltran. The circuit court held an evidentiary hearing, excluded Beltran's live testimony because he was not on the appellants' witness list, considered his declaration, and denied disqualification. The Second District reversed and remanded for a new evidentiary hearing.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The circuit court must convene an evidentiary hearing in accordance with the opinion, allowing consideration of Beltran's live testimony and any further evidence and arguments the parties present, and may reconsider the disqualification ruling.

CASES CITED

- Iezzi Fam. Ltd. P'ship v. Edgewater Beach Owners Ass'n, 254 So. 3d 584, 586 (Fla. 1st DCA 2018)
- Leppert v. Lakebreeze Homeowners Ass'n, 500 So. 2d 250, 252 (Fla. 1st DCA 1986)
- Pagidipati v. Vyas, 353 So. 3d 1204, 1211 (Fla. 2d DCA 2022)
- Kaplan v. Divosta Homes, L.P., 20 So. 3d 459, 461 (Fla. 2d DCA 2009)
- Balaban v. Philip Morris USA Inc., 240 So. 3d 896, 899 (Fla. 4th DCA 2018)
- Manning v. Cooper, 981 So. 2d 668, 670 (Fla. 4th DCA 2008)
- Gaspar's Passage, LLC v. RaceTrac Petroleum, Inc., 243 So. 3d 492, 500-01 (Fla. 2d DCA 2018)
- Scott v. Higginbotham, 834 So. 2d 221, 223 (Fla. 2d DCA 2002)
- Gaton v. Health Coalition, Inc., 745 So. 2d 510, 511 (Fla. 3d DCA 1999)
- Koulisis v. Rivers, 730 So. 2d 289, 292 (Fla. 4th DCA 1999)
- Binger v. King Pest Control, 401 So. 2d 1310, 1313-14 (Fla. 1981)
- AT&T Wireless Services, Inc. v. Castro, 896 So. 2d 828, 832 (Fla. 1st DCA 2005)
- State v. Gerry, 855 So. 2d 157, 161 (Fla. 5th DCA 2003)
- State Farm Mut. Auto. Ins. Co. v. Bowling, 81 So. 3d 538, 541 (Fla. 2d DCA 2012)
- Keller Indus. v. Volk, 657 So. 2d 1200, 1202-03 (Fla. 4th DCA 1995)
- Pascual v. Dozier, 771 So. 2d 552, 554 (Fla. 3d DCA 2000)
- Louisville Scrap Material Co. v. Petroleum Packers, Inc., 566 So. 2d 277, 278 (Fla. 2d DCA 1990)
- Callari v. Winkeljohn, 329 So. 3d 795, 797 (Fla. 3d DCA 2021)
- Montero v. Corzo, 320 So. 3d 976, 980 (Fla. 3d DCA 2021)
- Deutsche Bank Nat'l Tr. Co. ex rel. LSF MRA Pass-Through Tr. v. Perez, 180 So. 3d 1186, 1189 (Fla. 3d DCA 2015)
- Fisher v. Perez, 947 So. 2d 648, 652 (Fla. 3d DCA 2007)

- Silverman v. Millner, 514 So. 2d 77, 79 (Fla. 3d DCA 1987)
- Jean v. Sanitation Inc., 596 So. 2d 1245, 1247 (Fla. 4th DCA 1992)
- LoBue v. Travelers Ins., 388 So. 2d 1349, 1351 (Fla. 1980)
- Barth v. Khubani, 748 So. 2d 260, 262 n.7 (Fla. 1999)

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